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FILED

7/6/2007  
 RICHARD W. WIEKING  
 U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

9  
 10 Attorneys for Plaintiffs  
 11 GYM-MARK, INC. and THE GYMBOREE CORPORATION

12 GYM-MARK, INC. and  
 13 THE GYMBOREE CORPORATION

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

EDL

Case No.:

07/3523

16 Plaintiffs,  
 17 v.  
 18 CHILDREN'S APPAREL NETWORK, LTD.  
 and MERVYN'S LLC,  
 19 Defendants.

20 COMPLAINT FOR COPYRIGHT  
 21 INFRINGEMENT AND UNFAIR  
 22 COMPETITION

23 JURY DEMAND

24 CERTIFICATE OF INTERESTED  
 25 PARTIES

26 Plaintiff Gym-Mark, Inc. ("Gym-Mark") and Plaintiff The Gymboree Corporation  
 27 ("Gymboree") (collectively "Plaintiffs") complain in this action against Defendant  
 28 Mervyn's LLC ("Mervyn's") and Defendant Children's Apparel Network, Ltd. ("CAN")  
 (collectively "Defendants") as follows:

29 PARTIES

30 1. Plaintiff Gym-Mark is a corporation organized and existing under the laws of  
 31 the State of California with its principal place of business at 500 Howard Street, San  
 32 Francisco, California 94105.

1           2. Plaintiff Gymboree is a corporation organized and existing under the laws of  
 2 the State of Delaware, with its principal place of business at 500 Howard Street, San  
 3 Francisco, California 94105.

4           3. Based upon its corporate filings with the California Secretary of State,  
 5 Defendant Mervyn's is a limited liability company organized and existing under the laws of  
 6 the State of California with its headquarters located at 22301 Foothill Boulevard, Hayward,  
 7 California 94541. Mervyn's also is doing business in this District through numerous retail  
 8 stores located throughout this District.

9           4. Based upon its corporate filings with the New York Secretary of State,  
 10 Defendant CAN is a corporation organized and existing under the laws of New York State,  
 11 with its principal place of business at 77 South First Street, Elizabeth, New Jersey 07206.  
 12 Based upon the YOUNG HEARTS labels sewn into the infringing goods found in Mervyn's  
 13 retail stores (as described below) and Plaintiffs' subsequent investigation revealing that the  
 14 federal trademark registration YOUNG HEARTS is owned by CAN, Plaintiffs allege that  
 15 CAN transacts with persons within this District and knowingly places articles of clothing  
 16 into the stream of commerce for sale within this District—in particular, by selling and  
 17 shipping its goods to Mervyn's, a company headquartered in this District and with stores  
 18 throughout this District.

19

**JURISDICTION AND VENUE**

20

21           5. This action is for the infringement of United States copyrights, pursuant to the  
 22 laws of the United States, 17 U.S.C. § 101 *et seq.*, and for unfair competition in violation of  
 23 California law. Subject matter jurisdiction for the claim of copyright infringement is proper  
 24 in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a). Supplemental jurisdiction for the  
 25 claim of unfair competition is proper in this Court pursuant to 28 U.S.C. § 1337 because it  
 26 forms part of the same case or controversy as the claim for copyright infringement.

27           6. General personal jurisdiction over Mervyn's is proper in this District in light  
 28 of its headquarters in this District, stores within this District, and systematic business

1 activity within the District. Additionally, specific personal jurisdiction over Mervyn's is  
2 proper in this District in light of its sales of the infringing articles within the District, and by  
3 engaging in unfair competition in this District.

4       7. Specific personal jurisdiction over CAN is proper in this District in light of its  
5 business activity with Mervyn's, headquartered within the District, contacts with this  
6 District in connection with the sale of the infringing articles to Mervyn's, and knowing  
7 harm of Gym-Mark and Gymboree in this District by its knowing placement of the  
8 infringing articles into the stream of commerce for sale within this District, and by engaging  
9 in unfair competition in this District in connection with the actions described herein.

10 8. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a).

## INTRADISTRICT ASSIGNMENT

13 9. Because this action is an Intellectual Property Action within the meaning of  
14 Civil Local Rule 3-2(c), the action is to be assigned on a district-wide basis.

## **FACTUAL BACKGROUND**

17 10. Gym-Mark owns United States Copyright Registration No. VAu682-370  
18 dated November 18, 2005, titled the "GIRL/BABYGIRL/KIDGIRL SUMMER I FIESTA  
19 2006" line, including "FIESTA FLOWERS & CROCHET INSET" and "FIESTA  
20 FLOWERS WITH LADYBUGS". FIESTA FLOWERS & CROCHET INSET is an  
21 original and appealing fabric pattern for machine crewel embroidery, featuring artful  
22 arrangements of red, tangerine-color, and light purple flowers of different shapes and sizes  
23 with a green garland of leaves connecting the flowers in the arrangements. FIESTA  
24 FLOWERS WITH LADYBUGS is an original and appealing fabric pattern for machine  
25 crewel embroidery featuring an artful arrangement of red, tangerine-color, light purple and  
26 hibiscus-color flowers, with green leaf and stem accents, and ladybugs with swirling,  
27 broken-line trails as a fanciful indicator of the flight of those insects amongst the colorful

1 flowers. True and correct copies of Registration No. VAu682-370 and deposits for the  
 2 same are attached hereto as Exhibit A.

3 11. Gym-Mark authorized the use of FIESTA FLOWERS & CROCHET INSET  
 4 and FIESTA FLOWERS WITH LADYBUGS by Gymboree, its affiliate and exclusive  
 5 licensee for these designs, in connection with high-end children's apparel sold under the  
 6 GYMBOREE® brand. The GYMBOREE® garments depicting the designs were available to  
 7 the public nationwide throughout the approximately 550 GYMBOREE® stores and on its  
 8 web site located at <www.gymboree.com> commencing in or about April 2006. Thus,  
 9 CAN and Mervyn's had access to these designs at least as of that time.

10 12. In or about May 2007, Plaintiffs became aware of the sale by Mervyn's of  
 11 numerous items of children's apparel manufactured by CAN under the trademark "YOUNG  
 12 HEARTS" registered to CAN, bearing embroidery designs substantially similar to that of  
 13 FIESTA FLOWERS & CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS.  
 14 The designs as depicted on these garments were worked cheaply in comparison to the  
 15 Gymboree versions because they used less stitching and less precision, and the overall  
 16 knockoff garments (the "Defendants' Knockoffs"), while also substantially similar to the  
 17 GYMBOREE® garments, were made of much cheaper fabric and sold at a significantly  
 18 lower price point than the garments sold by Gymboree.

19 13. As shown in Exhibit B attached hereto, the design on the Defendants'  
 20 Knockoff is substantially similar to the Plaintiffs' registered work FIESTA FLOWERS &  
 21 CROCHET INSET. The overall arrangement, colors, shapes, sizes, and placement of the  
 22 unique, individual flower and garland elements of the embroidery are substantially similar.

23 14. As shown in Exhibit C attached hereto, the design on the Defendants'  
 24 Knockoff is substantially similar to the Plaintiffs' registered work FIESTA FLOWERS  
 25 WITH LADYBUGS. The overall arrangement, colors, shapes, relative sizes and placement  
 26 of the unique, individual flower, leaf, stem, and ladybug elements of the embroidery are  
 27 substantially similar.

1 15. As shown in Exhibit D attached hereto, the design on the Defendants'  
2 Knockoff is substantially similar to the Plaintiffs' registered work FIESTA FLOWERS  
3 WITH LADYBUGS. The overall arrangement, colors, shapes, sizes, and placement of the  
4 unique, individual flower, leaf, and ladybug elements of the embroidery are substantially  
5 similar.

6 16. To date, Plaintiffs have discovered at least three of Defendants' Knockoffs,  
7 shown in Exhibits B, C, and D; there may well be others. Given the distinctiveness of  
8 Gym-Mark's designs, the fact that CAN copied at least two different embroidery designs  
9 onto at least three garments, and the fact that Gymboree competes directly with Defendants  
10 in the infant and children's clothing market, it is apparent that Defendants have willfully  
11 infringed Gym-Mark's designs.

## **FIRST CLAIM FOR RELIEF**

**(Copyright Infringement By All Plaintiffs Against All Defendants)**

17. Paragraphs 1 through 16 are hereby incorporated by reference.

16 18. Mervyn's has infringed Gym-Mark's copyright in FIESTA FLOWERS &  
17 CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS through the reproduction  
18 and/or distribution of substantially similar embroidery designs on its girls' garments sold  
19 throughout Mervyn's stores, including those stores found in this District.

20 19. CAN has infringed Gym-Mark's copyright in FIESTA FLOWERS &  
21 CROCHET INSET and FIESTA FLOWERS WITH LADYBUGS through the reproduction  
22 and/or distribution of substantially similar embroidery designs. Upon information and  
23 belief, CAN manufactured the embroideries and the garments on which they are stitched,  
24 and supplied these garments to Mervyn's for sale throughout this District.

25        20. Upon information and belief, the infringement of Gym-Mark's registered  
26        copyrights was willful. In designing Defendants' Knockoffs to compete with Gymboree's  
27        garments, CAN had access to FIESTA FLOWERS & CROCHET INSET and FIESTA  
28        FLOWERS WITH LADYBUGS. In deciding to carry FIESTA FLOWERS & CROCHET

1 INSET and FIESTA FLOWERS WITH LADYBUGS in its line of clothing, Mervyn's had  
 2 access to Gymboree's competing garments. The similarity of these highly creative designs,  
 3 and the use for identical purposes on competing products in the form of children's clothing  
 4 targeted to children of the same age and sex, give rise to a strong inference of willful  
 5 infringement.

6 21. Gym-Mark has been damaged by Defendants' willful infringement in a sum  
 7 to be determined.

8 22. Gymboree, the licensee of FIESTA FLOWERS & CROCHET INSET and  
 9 FIESTA FLOWERS WITH LADYBUGS, has been damaged by Defendants' willful  
 10 infringement in a sum to be determined.

11 23. As a direct result of the Defendants' infringement, Plaintiffs have suffered and  
 12 will continue to suffer irreparable harm, including but not limited to harm to their business  
 13 reputation and goodwill.

14 24. Plaintiffs are informed and believe and on that basis allege that Defendants  
 15 threaten to continue their infringing activities, and unless restrained and enjoined, will do  
 16 so. Plaintiffs' remedy at law is not by itself adequate to compensate them for the harm  
 17 inflicted and threatened by Defendants.

18 **SECOND CLAIM FOR RELIEF**

19 **(Unfair Competition Pursuant To Cal. Bus. & Prof. Code §§ 17200 *et seq.*  
 20 By Gymboree Against All Defendants)**

21 25. Paragraphs 1 through 16 are hereby incorporated by reference.

22 26. The California Unfair Business Practices Act, Bus. & Prof. Code §§ 17200 *et*  
 23 *seq.* ("Section 17200"), defines unfair competition as any "unlawful, unfair or fraudulent  
 24 business act or practice." Section 17200 provides for injunctive relief and restitution to  
 25 persons harmed by unfair competition.

26 27. Defendants are direct competitors of Gymboree in the market for infants' and  
 27 young children's apparel.

1       28. By engaging in the practices described in paragraphs 9 through 16, above,  
2 Defendants have engaged, and will continue to engage, in unfair competition as defined by  
3 Section 17200. These acts and practices violate Section 17200 in at least the following  
4 respects:

5                 (a) Defendants have engaged, and will continue to engage, in the unlawful  
6 business act or practice of infringing Gym-Mark's copyrighted embroidery designs, which  
7 Gymboree licenses, through CAN's reproduction of substantially similar embroidery  
8 designs on Defendants' Knockoffs and Mervyn's distribution of the same throughout its  
9 stores;

10                 (b) Defendants have engaged, and will continue to engage, in the unfair  
11 business practice of not investing in the creation of their own embroidery designs, or  
12 paying for others' designs, in their reproduction and/or distribution of Defendants'  
13 Knockoffs, which compete with Gymboree's goods; and

14                 (c) Defendants have engaged, and will continue to engage, in the unlawful,  
15 unfair, and fraudulent business practice of reproducing and/or distributing Defendants'  
16 Knockoffs, which are cheaper replicas of Gymboree's Girl/BabyGirl/Kidgirl Summer I  
17 Fiesta 2006 line of apparel.

18       29. As a direct result of unfair competition by Defendants, Gymboree has suffered  
19 and will continue to suffer irreparable harm, including but not limited to harm to its  
20 business reputation and goodwill. Because of Defendants' unlawful, unfair, and fraudulent  
21 business acts and practices, once customers learn that Defendants have a practice of pirating  
22 the Gymboree apparel with embroidery designs, they will refrain from purchasing  
23 Gymboree's more expensive apparel and wait to purchase the knocked-off, less-expensive  
24 items of apparel with similar designs that have been reproduced by CAN and sold by  
25 Mervyn's.

26       30. Defendants have been unjustly enriched by its unfair, unlawful and deceptive  
27 practices in a sum to be determined.

1       31. Defendants are presently engaged in unfair competition, and unless  
2 immediately restrained and enjoined, will continue to do so. Gymboree's remedy at law is  
3 not by itself adequate to compensate them for the harm inflicted and threatened by  
4 Defendants.

## PRAYER

WHEREAS, Plaintiffs pray for relief as follows:

8 A. For a judgment pursuant to 17 U.S.C. § 501 that Defendants have infringed  
9 Plaintiff's copyright in the work described herein and as reflected in United States  
10 Copyright Registration No. VAu682-370;

11 B. For an entry of preliminary and permanent injunctive relief pursuant to 17  
12 U.S.C. § 502 enjoining and restraining Defendants, their offices, directors, agents, servants,  
13 employees and all other persons in privity or acting in concert with them from further  
14 infringement of Plaintiffs' copyright as described herein and any others;

15 C. For entry of relief impounding all infringing articles, and destruction thereof,  
16 pursuant to 17 U.S.C. § 503;

17 D. For a finding that the infringement by Defendants was willful, and for an  
18 additional award for their willful infringement, pursuant to 17 U.S.C. § 504;

19 E. For an accounting of all of Defendants' profits attributable to the  
20 infringement, including both direct profits and indirect profits in the form of convoyed sales  
21 of related items, pursuant to 17 U.S.C. § 504;

22 F. For an award to Plaintiffs of their actual damages and any additional profits of  
23 the infringer, or enhanced statutory damages, whichever is the greatest, pursuant to 17  
24 U.S.C. § 504;

25 G. For an award of Plaintiffs' attorneys' fees, expenses and costs, pursuant to 17  
26 U.S.C. § 505;

27 H. For an entry of preliminary and permanent injunctive relief enjoining and  
28 restraining Defendants, their officers, directors, agents, servants, employees and all other

1 persons in privity or acting in concert with them from further engaging in unlawful, unfair,  
2 and fraudulent business acts and practices, pursuant to Cal. Bus. & Prof. Code § 17203;

3 I. For an award of restitution to Gymboree, pursuant to Cal. Bus. & Prof. Code  
4 § 17203;

5 J. For an award to Plaintiffs of such other and further relief as this Court deems  
6 just and proper.

7 Dated: July 6, 2007

8 Respectfully submitted,

9 HELLER EHRLMAN LLP

10 By 

11 ANNETTE L. HURST  
12 Attorneys for Plaintiffs  
13 GYM-MARK, INC. and  
14 THE GYMBOREE CORPORATION

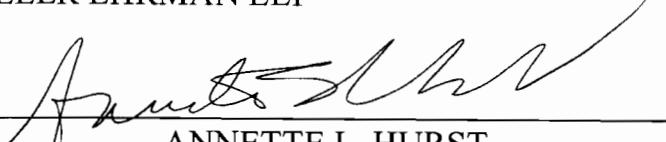
**DEMAND FOR JURY TRIAL**

2 In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff Gym-Mark, Inc.  
 3 and Plaintiff The Gymboree Corporation demand a trial by jury on all issues triable by a  
 4 jury.

5 Dated: July 6, 2007

6 Respectfully submitted,

7 HELLER EHRLMAN LLP

8 By 

9 ANNETTE L. HURST  
 10 Attorneys for Plaintiffs  
 11 GYM-MARK, INC. and  
 12 THE GYMBOREE CORPORATION

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

13 In accordance with Civil Local Rule 3-16, the undersigned certifies that the  
 14 following listed persons, associations of persons, firms, partnerships, corporations  
 15 (including parent corporations) or other entities (i) have a financial interest in the subject  
 16 matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in  
 17 that subject matter or in a party that could be substantially affected by the outcome of this  
 18 proceeding:

19 Plaintiff Gym-Mark, Inc. is wholly owned by Plaintiff The Gymboree Corporation;  
 20 and Plaintiff The Gymboree Corporation is a publicly traded company, of which more than  
 21 10% is owned by FMR Corporation and by Goldman Sachs Asset Management, L.P.

22 Dated: July 6, 2007

23 Respectfully submitted,

24 HELLER EHRLMAN LLP

25 By 

26 ANNETTE L. HURST  
 27 Attorneys for Plaintiffs  
 28 GYM-MARK, INC. and  
 THE GYMBOREE CORPORATION

## **EXHIBIT A**

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

**FORM VA**  
For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

VAU 682-370



EFFECTIVE DATE OF REGISTRATION

Nov 18 2005

Month

Day

Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

**1**

TITLE OF THIS WORK ▼

NATURE OF THIS WORK ▼ See Instructions

"GIRL/BABY GIRL/KID GIRL SUMMER FIESTA 2006" line FABRIC PATTERN

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

**2**

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

a GYM-MARK, INC

Was this contribution to the work a "work made for hire"?  Yes  No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of ▶ USA  
Domiciled in ▶

Was This Author's Contribution to the Work  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No  
If the answer to either of these questions is "Yes," see detailed instructions.

**NOTE**

Under the law "author" of "work made for hire" is generally the employer, not the employee (see Instructions). For any part of the work that was made for hire check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es) See Instructions

3 Dimensional sculpture  Map  Technical drawing  
 2 Dimensional artwork  Photograph  Text  
 Reproduction of work of art  Jewelry design  Architectural work

**b** NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  Yes  No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of ▶  
Domiciled in ▶

Was This Author's Contribution to the Work  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No  
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es) See Instructions

3-Dimensional sculpture  Map  Technical drawing  
 2 Dimensional artwork  Photograph  Text  
 Reproduction of work of art  Jewelry design  Architectural work

**3**

a Year in Which Creation of This Work Was Completed

2005  
This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work

Complete this information Month ▶ Year ▶ Nation ▶  
ONLY if this work has been published.

**4**

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

GYM-MARK, INC  
500 HOWARD STREET  
SAN FRANCISCO, CA 94105

Transfer if the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright ▼

APPLICATION RECEIVED

NOV 18 2005

ONE DEPOSIT RECEIVED

NOV 18 2005

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

See Instructions before completing this space

MORE ON BACK ▶

Complete all applicable spaces (numbers 5-9) on the reverse side of this page  
See detailed instructions.

Sign the form at line 8

DO NOT WRITE HERE

Page 1 of 4 pages

EXAMINED BY	<i>CH</i>	FORM VA
CHECKED BY	<i>MJ</i>	
<input type="checkbox"/> CORRESPONDENCE		FOR
Yes		COPYRIGHT
		OFFICE
		USE
		ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a.  This is the first published edition of a work previously registered in unpublished form.  
 b.  This is the first application submitted by this author as copyright claimant.  
 c.  This is a changed version of the work as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work complete only 6b for a compilation

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates ▼

6

a  
See instructions  
before completing  
this space

b. Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office give name and number of Account.  
Name ▼

Account Number ▼

7

GYMBOREE CORPORATION

DA 078743

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Gym-Mark, Inc  
500 Howard Street  
San Francisco, CA 94105  
Attn: Kimberly MacMillan  
Area code and daytime telephone number ▼ 415 278 7228

Fax number ▼ 415 278 7562

Email ▶ [kimberly.macmillan@gymboree.com](mailto:kimberly.macmillan@gymboree.com)

b

CERTIFICATION I the undersigned hereby certify that I am the

check only one ▶ □ author  
□ other copyright claimant  
□ owner of exclusive right(s)  
 authorized agent of GYM-MARK, INC  
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

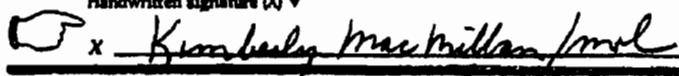
Typed or printed name and date ▼ If this application gives a date of publication in space 3 do not sign and submit it before that date

KIMBERLY MACMILLAN

Date ▶ 11/16/05

9

Handwritten signature (D) ▼



Certificate  
will be  
mailed in  
window  
envelope  
to this  
address

Name ▼	Kimberly MacMillan GYM-MARK, INC
Number/Street/Apt ▼	500 HOWARD STREET
City/State/ZIP ▼	SAN FRANCISCO, CA 94105

Complete all necessary spaces Sign your application in space 3
1. Application form 2. Nonrefundable filing fee in check or money order payable to Register of Copyrights 3. Deposit material
Library of Congress Copyright Office 101 Independence Avenue, S.E. Washington, D.C. 20559-6000

17 U.S.C. § 506(a) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application shall be fined not more than \$2,500.  
June 1998-100 000  
WEB REV June 1998

 PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/71

# CONTINUATION SHEET FOR APPLICATION FORMS

- This Continuation Sheet is used in conjunction with Forms CA, PA, SE, SR, TX and VA, only. Indicate which basic form you are continuing in the space in the upper right-hand corner.
- If at all possible try to fit the information called for into the spaces provided on the basic form.
- If you do not have enough space for all the information you need to give on the basic form use this Continuation Sheet and submit it with the basic form.
- If you submit this Continuation Sheet, clip (do not tape or staple) it to the basic form and fold the two together before submitting them.
- Space A of this sheet is intended to identify the basic application.
- Space B is a continuation of Space 2 on the basic application. Space B is not applicable to Short Forms.
- Space C (on the reverse side of this sheet) is for the continuation of Spaces 1, 4 or 6 on the basic application or for the continuation of Space 1 on any of the three Short Forms PA, TX, or VA.

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

**IDENTIFICATION OF CONTINUATION SHEET** This sheet is a continuation of the application for copyright registration on the basic form submitted for the following work:

- **TITLE.** (Give the title as given under the heading "Title of this Work" in Space 1 of the basic form.)

**A** "GIRL/BABY GIRL/KID/GRL SUMMER FIESTA 2006" Live  
**Identification of Application**  
 • **NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S)** (Give the name and address of at least one copyright claimant as given in Space 4 of the basic form or Space 2 of any of the  
 500 Howard Street  
 GYM-MARK, INC. San Francisco

**NAME OF AUTHOR** California 94105 **DATES OF BIRTH AND DEATH**  
 Year Born ▼ Year Died ▼

**B** **d**  
 Continuation of Space 2  
 Was this contribution to the work **AUTHOR'S NATIONALITY OR DOMICILE**  
 a "work made for hire"? Name of Country  
 Yes OR Citizen of ▶ \_\_\_\_\_  
 No Domiciled in ▶ \_\_\_\_\_  
**NATURE OF AUTHORSHIP** Briefly describe nature of the material created by the author in which copyright is claimed. ▼

**NAME OF AUTHOR** **DATES OF BIRTH AND DEATH**  
 Year Born ▼ Year Died ▼

**e**  
 Was this contribution to the work **AUTHOR'S NATIONALITY OR DOMICILE**  
 a "work made for hire"? Name of Country  
 Yes OR Citizen of ▶ \_\_\_\_\_  
 No Domiciled in ▶ \_\_\_\_\_  
**NATURE OF AUTHORSHIP** Briefly describe nature of the material created by the author in which copyright is claimed. ▼

**NAME OF AUTHOR** **DATES OF BIRTH AND DEATH**  
 Year Born ▼ Year Died ▼

**f**  
 Was this contribution to the work **AUTHOR'S NATIONALITY OR DOMICILE**  
 a "work made for hire"? Name of Country  
 Yes OR Citizen of ▶ \_\_\_\_\_  
 No Domiciled in ▶ \_\_\_\_\_  
**NATURE OF AUTHORSHIP** Briefly describe nature of the material created by the author in which copyright is claimed. ▼

Use the reverse side of this sheet if you need more space for continuation of Spaces 1, 4 or 6 of the basic form or for the continuation of Space 1 on any of the Short Forms PA, TX or VA.

FORM VAU /CON  
UNITED STATES COPYRIGHT OFFICE

VAU 682-370



PA/Pause/SEG/SEL/SR/SRUTX/TXU/VAU/VAU

EFFECTIVE DATE OF REGISTRATION

Nov 18 2005  
 (Month) (Day) (Year)

CONTINUATION SHEET RECEIVED

Page 3 of 4 pages

**CONTINUATION OF (Check which):**

Space 1

Space 4

**Space 6**

LARGE VESTA FLORAL (A1471-1)  
CROCHET FIESTA FLOWERS  
FIESTA FLOWERS W/LADYBUGS  
FIESTA  
CREWEL FIESTA FLOWER VINE  
FIESTA BOUQUET W/LADYBUGS  
SMALL FIESTA FLORAL (A1467-1)  
FIESTA FLOWERS & B CROCHET INSET  
FIESTA LADYBUG  
LITTLE LADY FIESTA FLOWER  
FIESTA CROCHET FLOWER & EMBROIDERY  
FIESTA FLOWERS WITH LADYBUGS

## C

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Name ▼	Kimberly MacMillan
Number/Street/Zip ▼	THE GYMBOREE CORPORATION 500 Howard Street
City/State/ZIP ▼	San Francisco California 94105

**YOUNGEST**  
Complete all necessary sections  
Sign your application

**BURDA'S LITTLE  
BIRTHDAY BOOK**

Class 100  
Library of Congress Catalogue  
101 Independence Avenue, S.E.  
Washington, D.C. 20540-0008

4

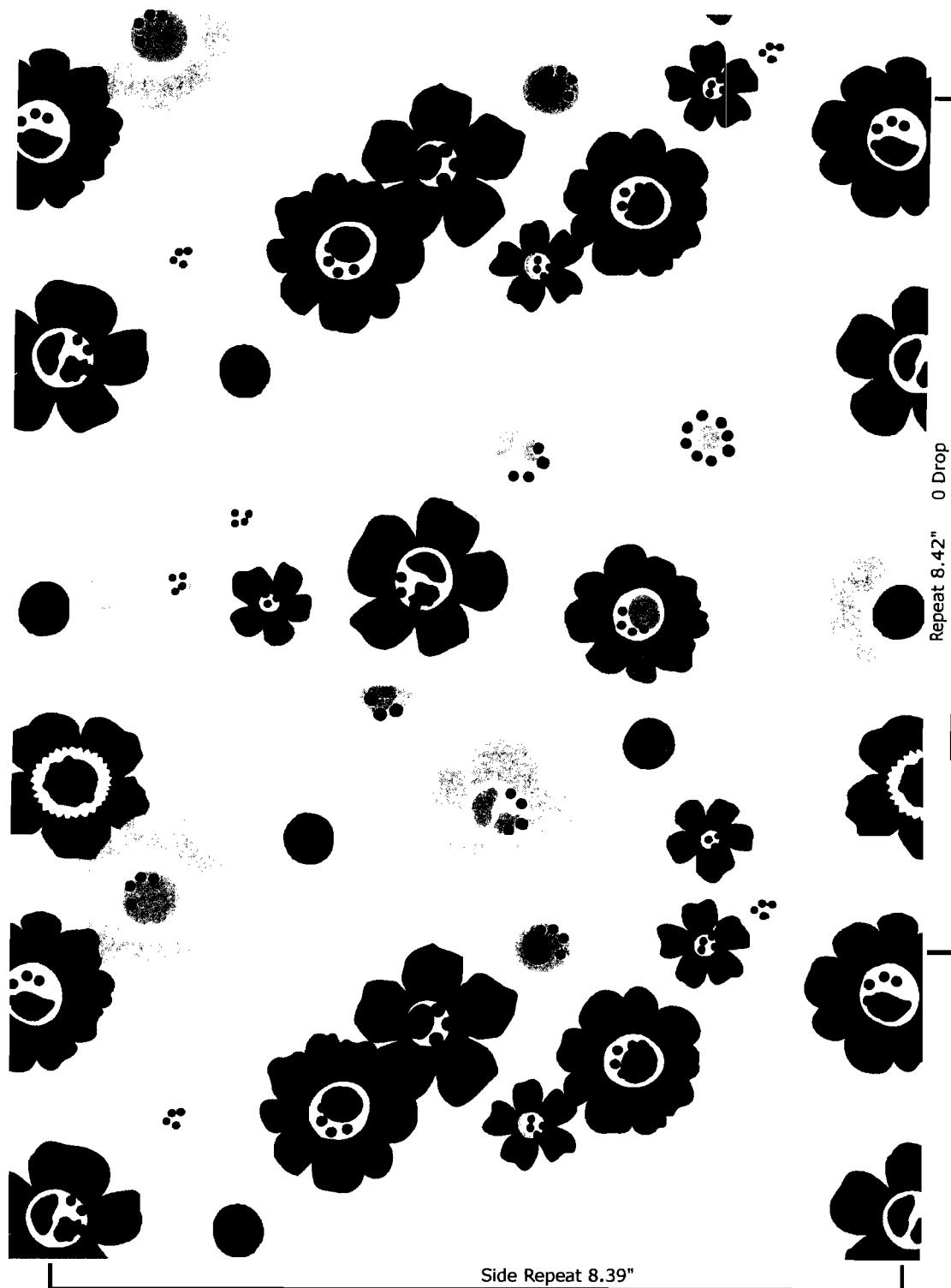
For we expect to  
change. For  
now, that is  
Catholic  
truth to  
us, and  
we are  
not  
Catholic.

A1471-1

Large Fiesta Floral - Lil Snow  
Girl/Baby Girl Summer 2006 Delivery

KNIT/WOVEN

7/1/05



## GROUND

<input type="checkbox"/>								
Lil Snow	Jubilee Red	Buff Orange	Forest Shade	Very Berry	Tangerine	Hibiscus Cooler	Flamingo	Black

BG06-SMR1-013  
 BABY GIRL: SUMMER 1 2006  
 MACHINE EMBROIDERY AND CROCHET FLOWERS  
 REF# BG21147



9/26/05. REMOVED BACK A/W  
 8/11/05. ADD LADY BUGS TO A/W

7/18/05

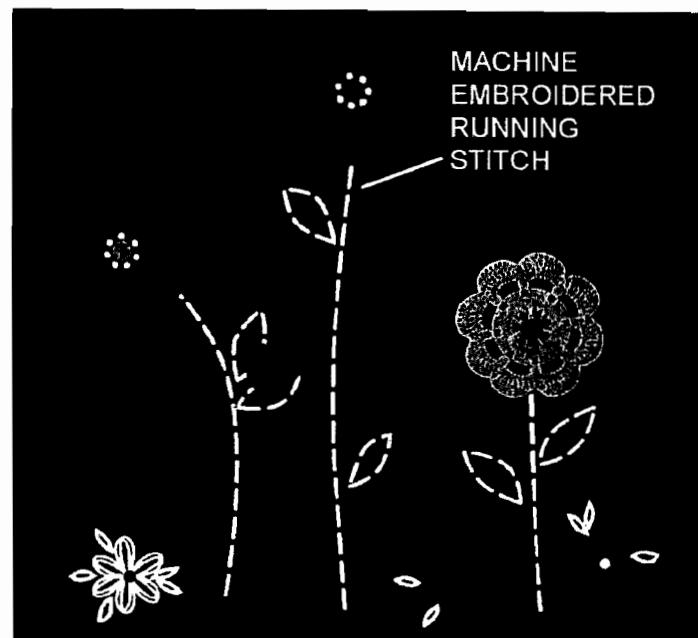
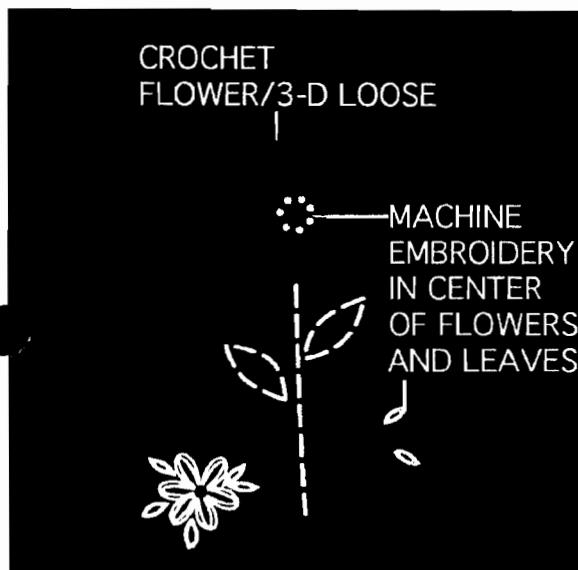
12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

LEFT SHORT LEG/FRONT

DENIM GROUND

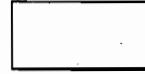
RIGHT SHORT LEG/FRONT



GROUND



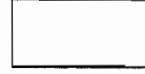
DENIM



Tangerine



Jubilee  
Red



Buff  
Orange



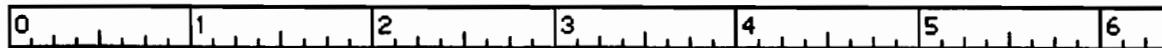
Forest  
Shade



VERY  
BERRY



BLACK



BG06-SMR1-020 FIESTA FLOWERS W/LADYBUGS  
MACHINE CREWEL EMBROIDERY  
BABY GIRL - SUMMER 1 2006 DELIVERY  
REF# BG71086  
STYLE#

LATE ADD 9/27/05

12-18 MOS.

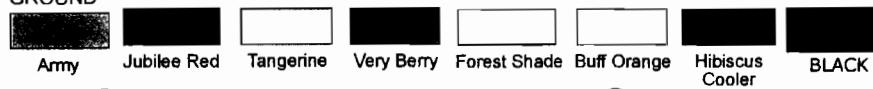
PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

REVIEW TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

ALL MACHINE CREWEL EMBROIDERY

MACHINE CREWEL EMBROIDERY  
RUNNING STITCH

## GROUND



G06-SMR1-010 *ESTA*  
KID GIRL:SUMMER 1 2006  
LASER CUT RIBBON APPLIQUE/MACHINE EMBROIDERY/BUTTON  
REF# 12314  
STYLE #

8/10/05 7/18/05  
REVISED  
BUTTON COLOR  
3-4 YEARS  
PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

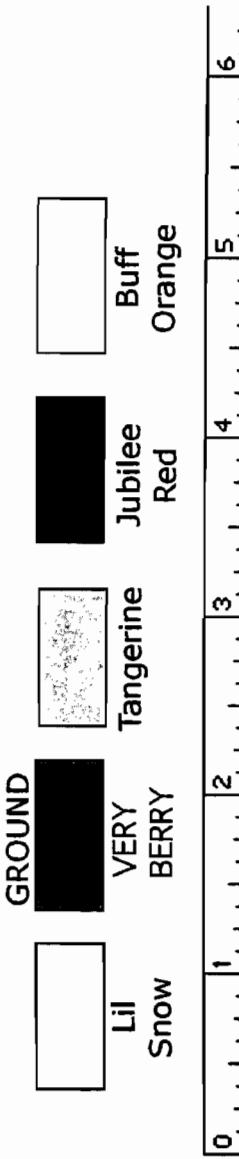
MACHINE EMBROIDERED  
RUNNING STITCH



ALL LETTER:

LASER CUT SATIN RIBBON  
T13021 APPLIED  
TACKED DOWN  
WITH  
MACHINE EMBROIDERED  
RUNNING STITCH

FAUX  
18L WOOD  
FLOWER  
BUTTON  
B32017



G06-SMR1-011 *FESTA FLOUER vine*  
CREWEY EMBROIDERY/3-D CROCHET APPLIQUE FLOWERS/SEQUINS  
MACHINE  
GIRL - SUMMER 1 2006 DELIVERY  
REF# 21771  
STYLE#

9/27/05 REVISED AW 7/13/05

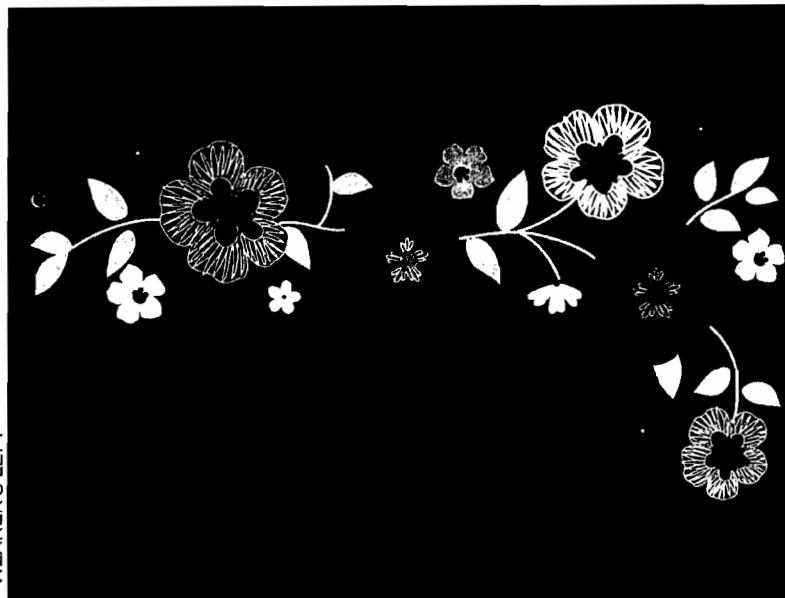
3-4 YEARS.

WEAPER'S EET

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

WEAVER'S SIGHT

WEARER'S LEFT



A black and white illustration of a floral wreath design. The wreath is composed of various flowers, including large poppies and smaller blossoms, arranged in a circular pattern. The design is symmetrical and decorative, suitable for a headpiece. The text "WEARER'S LEFT" is positioned vertically on the left side of the wreath.

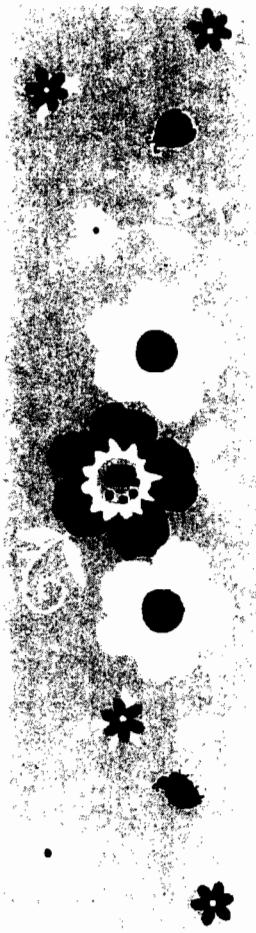
ALL MACHINE CLOTHES EMBROIDERY

BG06-SMR1-014 FESTA BOUTIQUE W/LAOY BRGS  
MACHINE CREWEI EMBROIDERY  
BABY GIRL - SUMMER 1 2006 DELIVERY  
REF# BG40581  
STYLE#

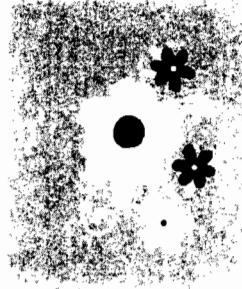
12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

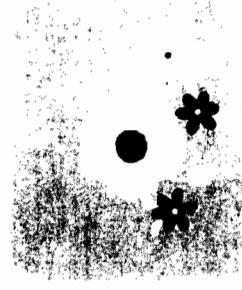
FRONT



RIGHT LEG



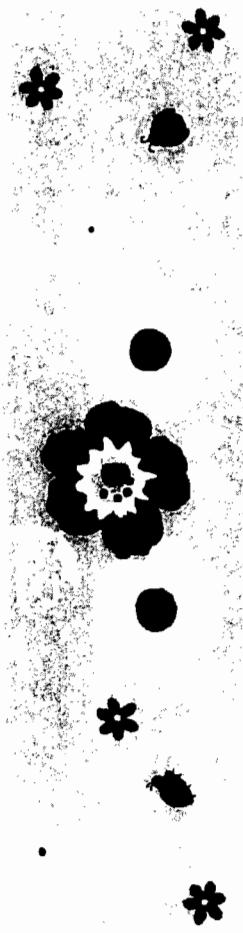
LEFT LEG



CALLOUTS

ALL MACHINE CREWEL EMBROIDERY

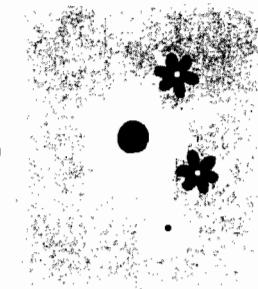
FRONT



RIGHT LEG



LEFT LEG



GROUND							
Buff Orange	Jubilee Red	Tangerine	Very Berry	Forest Shade	Lil Snow	Hibiscus	Cooler

0 1 2 3 4 5 6 7

A1467-1

KNIT

7/1/05

Small Fiesta Floral - Black  
Girl/Baby Girl Summer 2006 Delivery

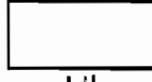
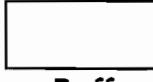
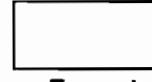


Side Repeat 3.6"

GROUND



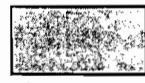
Black

Lil  
SnowJubilee  
RedBuff  
OrangeForest  
Shade

Very Berry



Tangerine

Hibiscus  
Cooler

Flamingo

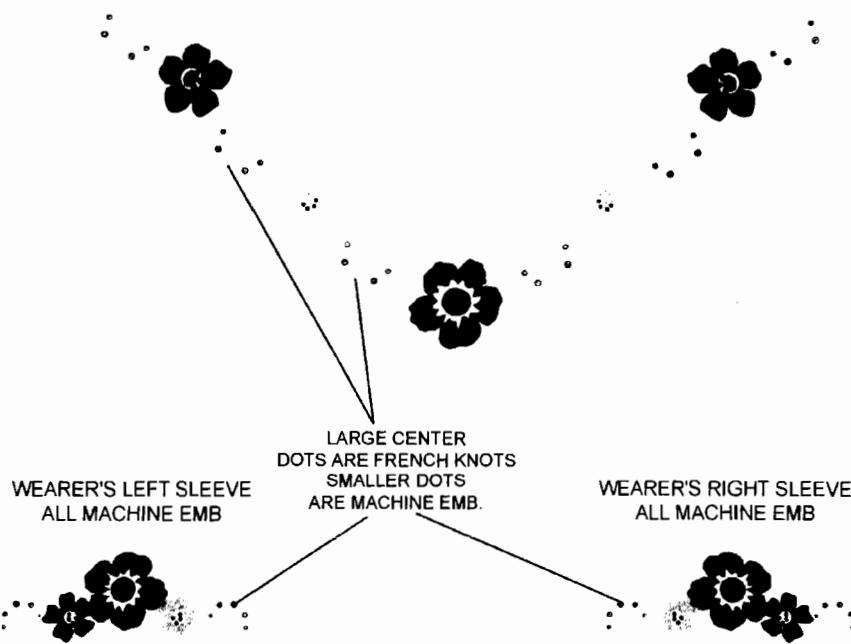
Blackberry  
Stain

G06-SMR1-015  
 MACHINE EMBROIDERY/CROCHET INSET  
 GIRL/BABY GIRL - SUMMER 1 2006 DELIVERY  
 REF# 12323/BG11456 LIKE-STYLE  
 STYLE#

7/18/05

3-4 YEARS.  
 PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

PLACEMENT AT NECKLINE  
 ALL MACHINE CREWEL EMBROIDERY

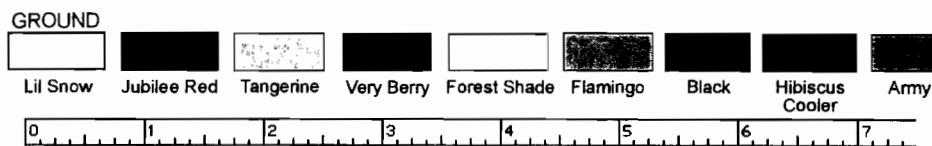


CROCHET INSET - ALL CROCHET

REPEAT 1.3"

WDTH 1.5"

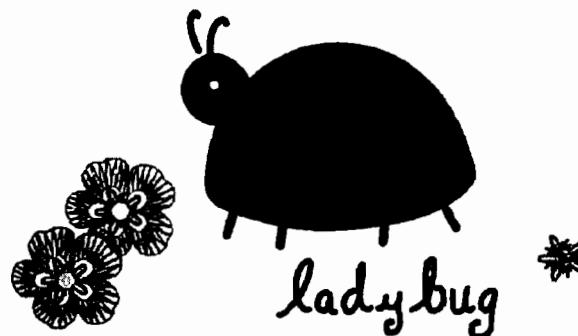
THIS COLOR  
REPRESENTS  
LIL SNOW



BG06-SMR1-003 FIESTA LADY BUG  
 MACHINE EMBROIDERY/APPLIQUE  
 BABY GIRL - SUMMER 1 2006 DELIVERY  
 REF# BG11447  
 STYLE#

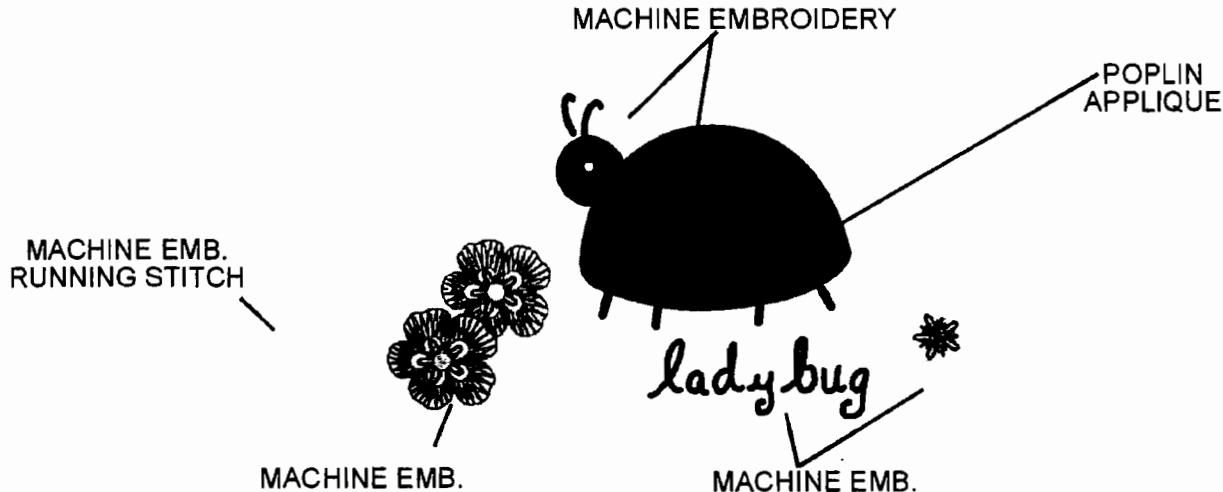
9/26/05 Changed Crochet to  
 Emb 7/18/05

12-18 MOS.  
 PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

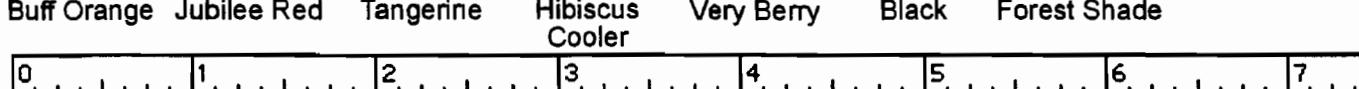



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CALLOUTS



GROUND



LITTLE LADY FIESTA FLOWER

BG06-SMR1-005

BABY GIRL: SUMMER 1 2006

7/18/05

HEAVY MACHINE CREWEL EMBROIDERY/BUTTON/SATIN STITCH

REF# BG11452

12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

HEAVY MACHINE CREWEL  
EMBROIDERED FLOWERS



MACHINE EMBROIDERY-MATTE  
THREAD  
FRENCH  
KNOTS

14L



B32017

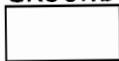
MACHINE CREWEL EMBROIDERY

*little lady*

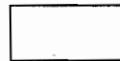
MACHINE EMBROIDERED  
SATIN STITCH/MATTE THREAD

IMITATION  
WOOD BUTTON

GROUND



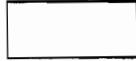
LIL  
SNOW



Tangerine



Jubilee  
Red



Buff  
Orange



Forest  
Shade



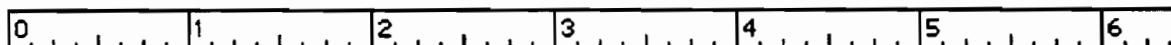
VERY  
BERRY



HIBISCUS  
COOLER



BLACK



FIESTA CROCHET FLOWER & EMBROIDERY

BG06-SMR1-002

BABYGIRL:SUMMER 1 2006

3D CROCHET FLOWER /MACHINE EMBROIDERY

REF#BG11446

STYLE #

9/27/05: REVISED AA TECHNIQUE

9/29/05

7/18/05

revised crochet dangle colors

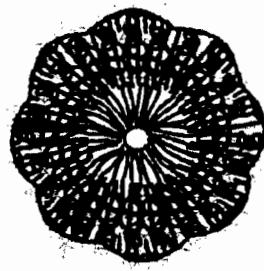
8/10/05

ADDED LADYBUG TO EMB.

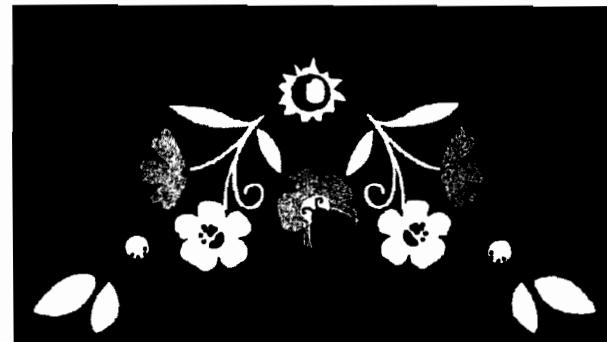
12-18 MOS.

PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

LOOSE  
3-D CROCHET FLOWER

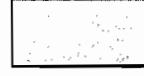


ALL FLOWERS  
ALL MACHINE CREWEL EMBROIDERY



PLACEMENT AT STRAPS  
TACKED DOWN WITH  
MACHINE EMBROIDERY  
IN CENTER

GROUND



VERY BERRY

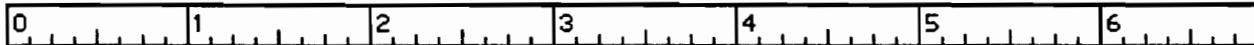
BUFF  
ORANGE

Tangerine

Jubilee  
Red

Forest  
Shade

BLACK



## FIESTA FLOWERS WITH LADYBUGS

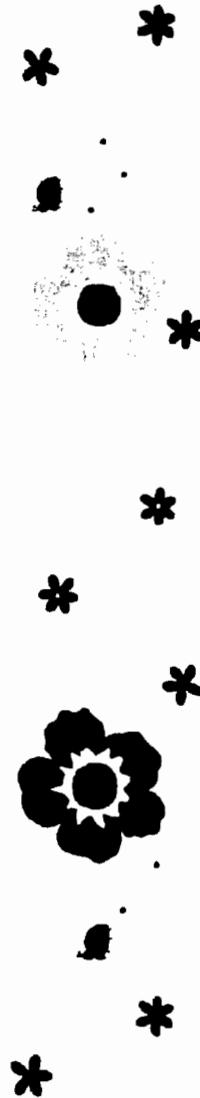
BG06-SMR1-006  
 MACHINE CREWEL EMBROIDERY  
 BABY GIRL - SUMMER 1 2006 DELIVERY  
 REF# BG21139  
 STYLE#

9/27/05: REVISED A/W TECHNIQUE  
 9/26/05: CHANGE DANGLES TO MACH EMB  
~~8/31/05: REVISED A/W TECHNIQUE~~  
~~8/12/05: ADDED LADYBUG DANGLES~~  
~~8/11/05: REVISED A/W-ADDED LADYBUGS~~  
 7/4/05

**ATTACH DANGLES  
 TO TIES ON GARMENT**

12-18 MOS.  
 PLEASE SEE TECH DESIGN AND COLOR SKETCH FOR EXACT PLACEMENT

ALL MACHINE CREWEL EMBROIDERY



SATIN STITCHED  
 EDGE  
 MACHINE  
 EMBROIDERY

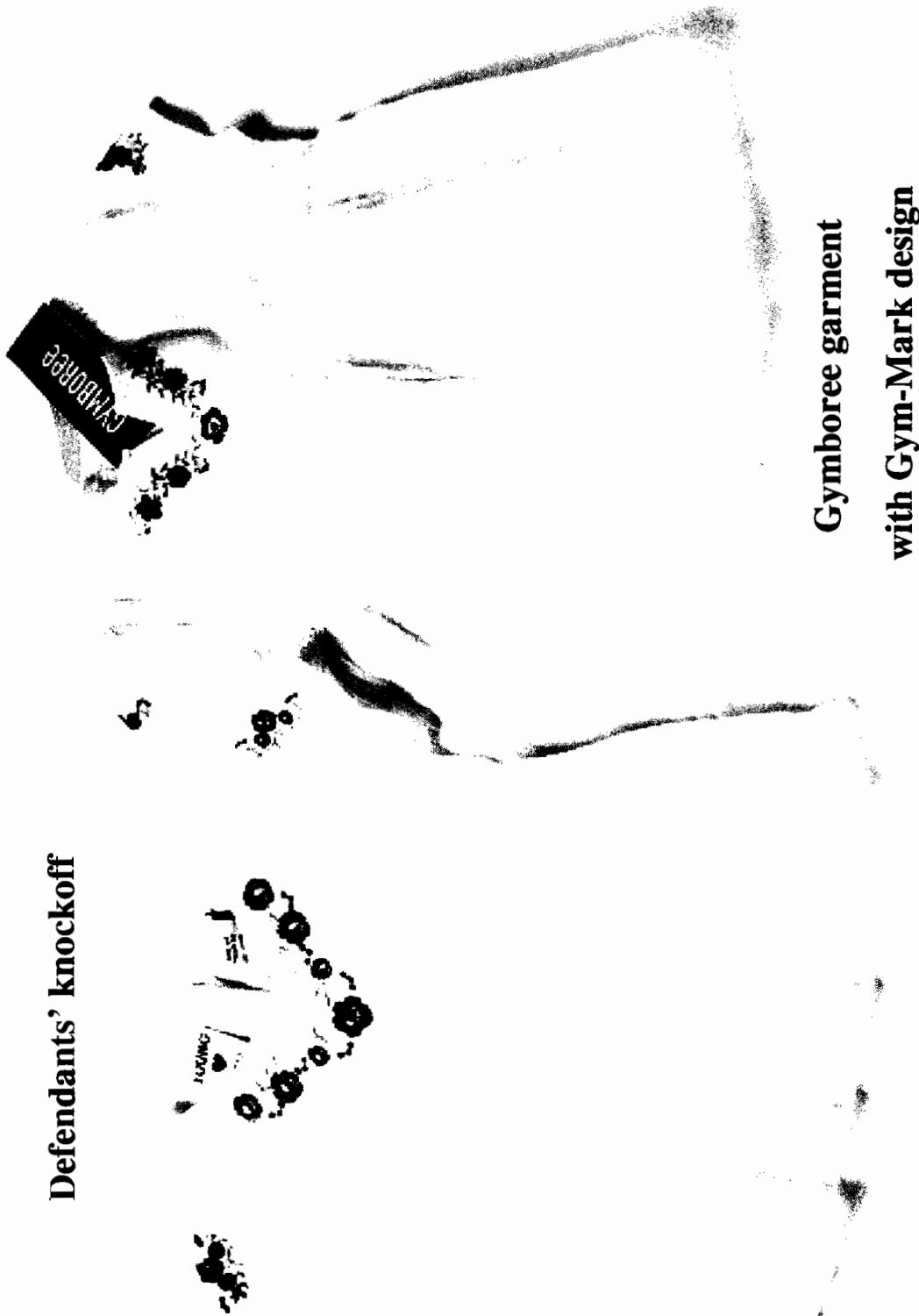
REPEAT

GROUND							BLACK
Buff Orange	Jubilee Red	Tangerine	Very Berry	Forest Shade	Lil Snow	Hibiscus Cooler	3-D MACHINE EMB.

## **EXHIBIT B**

**EXHIBIT B**

**Defendants' knockoff**



**Gymboree garment  
with Gym-Mark design**



**EXHIBIT B (continued)**

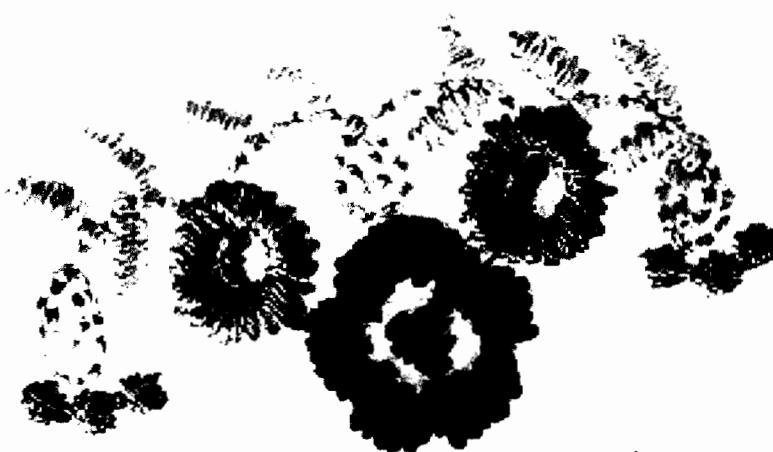
**Defendants' knockoff  
(close-up of neckline)**

**Gym-Mark design  
(close-up of neckline)**

**EXHIBIT B (continued)**



**Gym-Mark design**  
(close-up of sleeve)



**Defendants' knockoff**  
(close-up of sleeve)

## **EXHIBIT C**

**EXHIBIT C**

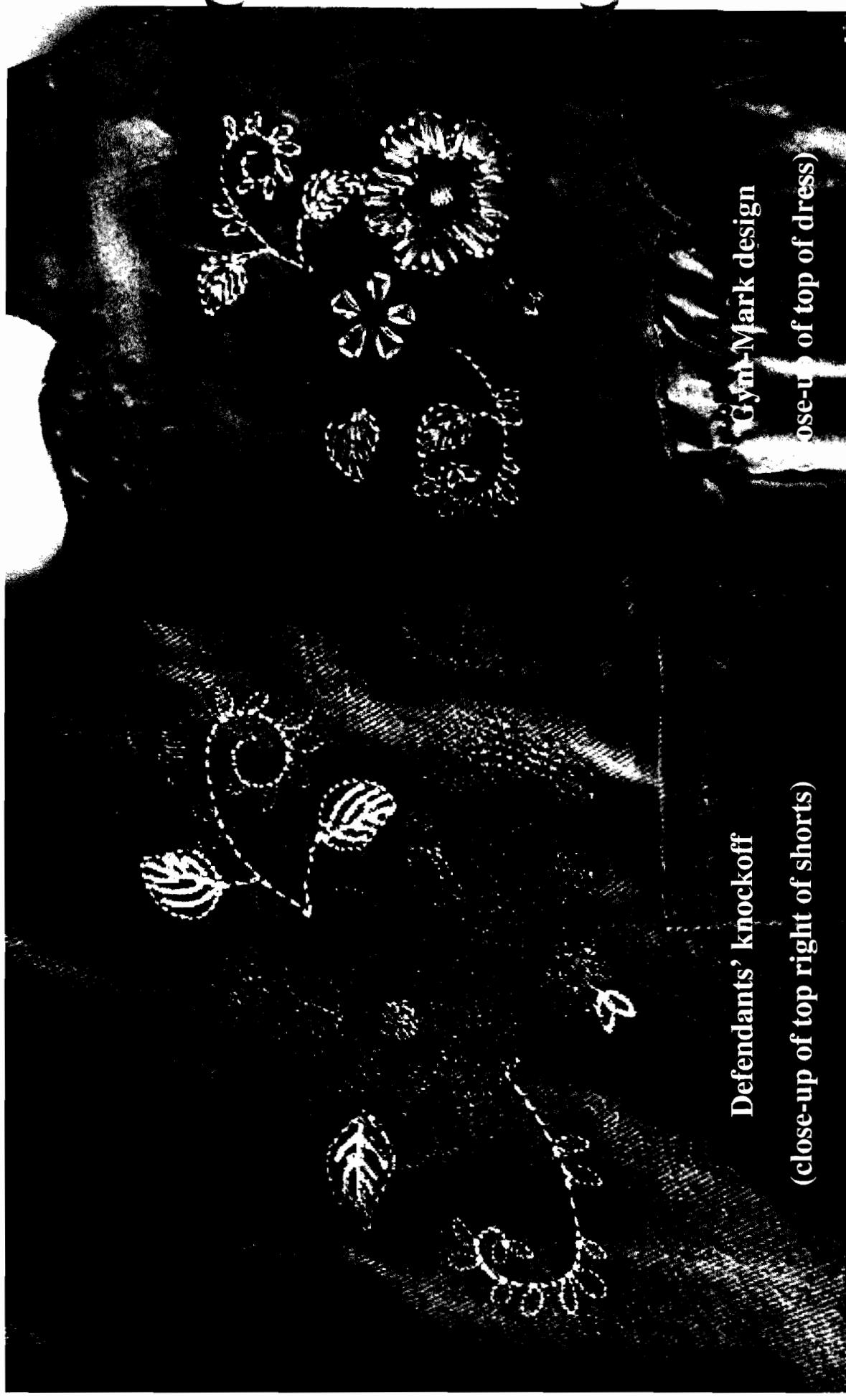
Defendants'  
knockoff

Gymboree garment

with Gym-Mark designs



**EXHIBIT C (continued)**



**EXHIBIT C (continued)**

Defendants' knockoff

(close-up of bottom left of shorts)



Gym-Mark design  
(close-up of bottom middle of dress)

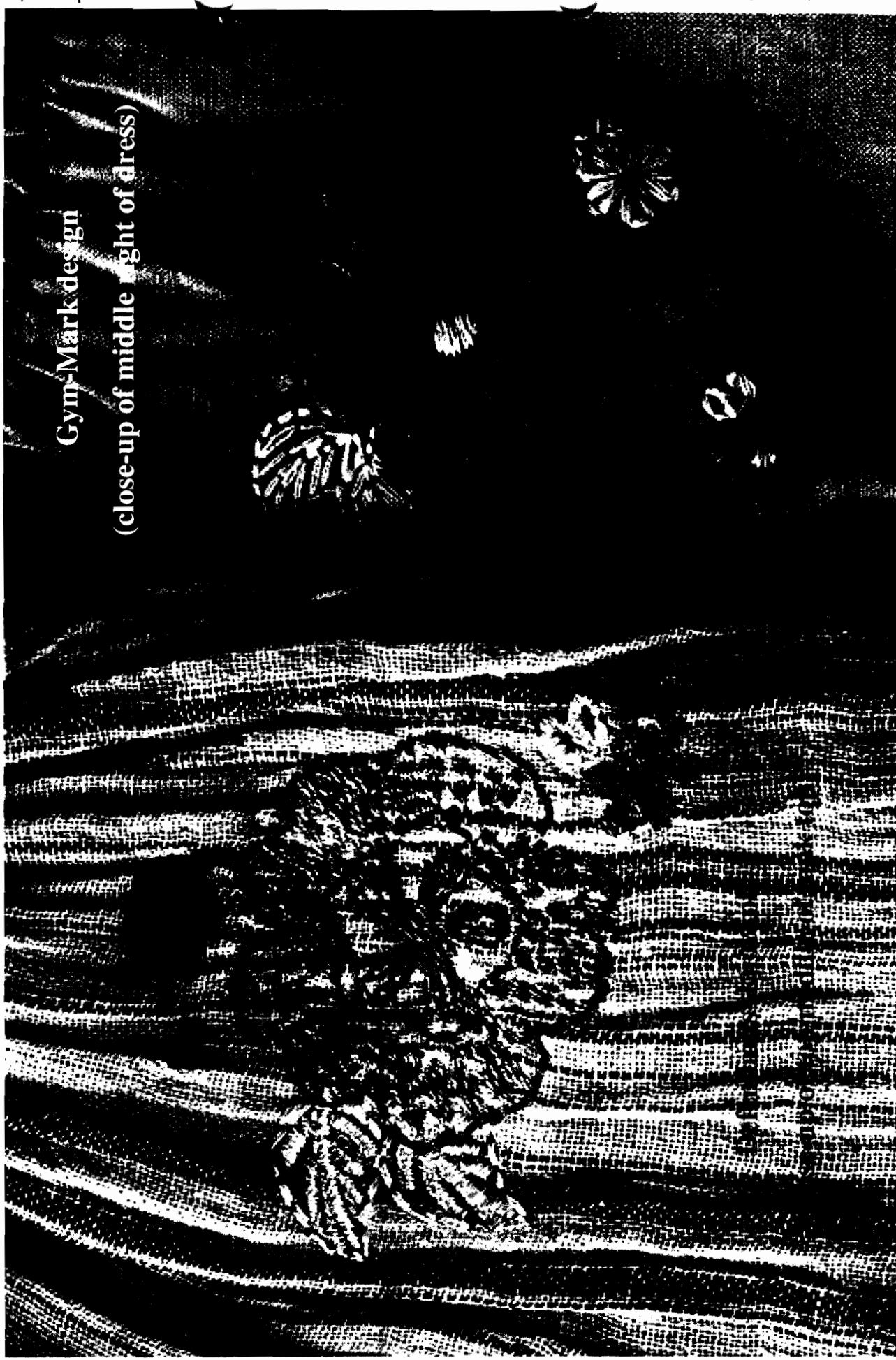
## **EXHIBIT D**

**EXHIBIT D**

Defendants'  
knockoff



**EXHIBIT D (continued)**



**EXHIBIT D (continued)**



**EXHIBIT D (continued)**

